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BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE
CITY AND BOROUGH OF JUNEAU

KARLA HART)
)
 Appellant)
)
 vs.)
)
 CITY AND BOROUGH OF JUNEAU)
 PLANNING COMMISSION)
)
 Appellee)
)

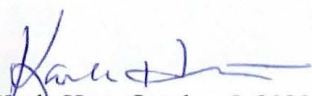
Notice of Decision: July 20, 2023
Appeal Case No. APL 2023-AA01

MOTION FOR HEARING OFFICER DISQUALIFICATION

Application for Relief. Appellant Karla Hart requests the City and Borough of Juneau Assembly disqualify Scott Brandt-Erichsen, of Keene & Curial, P.P.C. at 540 Water Street, Suite 302, Ketchikan, Alaska 99901 from the role of Hearing Officer for Appeal Case No. APL 2023-AA01 based on a reasonable, good faith belief that Mr. Brandt-Erichsen’s objectivity and fairness might be subject to underlying bias based on the facts outlined in the accompanying affidavit.

Relief Sought. Appellant Karla Hart requests than an independent hearing officer from outside of Southeast Alaska, and with no association with the cruise industry, nor with Huna Totem Corporation, nor Norwegian Cruise Lines, be appointed.

Accompanying Document. An affidavit from Plaintiff Karla Hart, dated October 5, 2023, accompanies this motion.


Karla Hart, October 5, 2023

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BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE
CITY AND BOROUGH OF JUNEAU

KARLA HART)
)
Appellant)
)
vs.)
)
CITY AND BOROUGH OF JUNEAU)
PLANNING COMMISSION)
)
Appellee)

Notice of Decision: July 20, 2023
Appeal Case No. APL 2023-AA01

AFFIDAVIT OF KARLA HART
REGARDING MOTION FOR THE CITY AND BOROUGH OF JUNEAU
ASSEMBLY TO DISQUALIFY THE HEARING OFFICER

I, Karla Hart (Appellant), state upon oath or affirmation that the following facts are true to the best of my knowledge:

1 1. Scott Brandt-Erichsen (Hearing Officer), owns the law office Keene & Currall,
2 PPC, located in Ketchikan, in partnership with H. Clay Keene.¹

3 2. State of Alaska Business Licensing records accessed on August 31, 2023, show
4 Keene & Currall, a Professional Corporation, to be the active registered agent for Alaska
5 Alliance for Cruise Travel, Inc., entity #126529.²

6 3. “Alaska Alliance for Cruise Travel (AlaskaACT) is a statewide, non-profit,
7 membership-funded organization made up of businesses and individuals benefiting [sic] from
8 cruise travel. Through AlaskaACT, these stakeholders will work together to promote accurate
9 information and support responsible development and growth of Alaska tourism and the cruise
10 industry.”³

11 4. Russell Dick, Huna Totem Corporation, Juneau; Tyler Hickman, Icy Strait Point,
12 Hoonah (a Huna Totem subsidiary); and Dennis McDonnell, Alaska Coach Tours, Anchorage (a
13 Huna Totem subsidiary that operates in Juneau) are on the steering committee of AlaskaACT.⁴

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17 ¹In footnote 1 of the attached Order Denying Request for Voluntary Withdrawal of Hearing Officer, Dated,
18 September 25, 2023 (Attachment A), Mr. Brandt-Erichsen states that “Keene & Curall, PPC, is a
19 partnership of professional corporations, Brandt-Erichsen LLC, solely owned by Scott Brandt-Erichsen,
20 and Keene & Currall a professional corporation, solely owned by H. Clay Keene.”

21 “Whether two or more lawyers constitute a firm within paragraph (c) can depend on the specific facts. For
22 example, two practitioners who share office space and occasionally consult or assist each other ordinarily
23 would not be regarded as constituting a firm. However, if they present themselves to the public in a way
24 that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for
25 purposes of the Rules. The terms of any formal agreement between associated lawyers are relevant in
26 determining whether they are a firm, as is the fact that they have mutual access to information concerning
27 the clients they serve. Furthermore, it is relevant in doubtful cases to consider the underlying purpose of
28 the Rule that is involved. A group of lawyers could be regarded as a firm for purposes of the Rule that the
29 same lawyer should not represent opposing parties in litigation, while it might not be so regarded for
30 purposes of the Rule that information acquired by one lawyer is attributed to another.” From the Alaska
31 Rules of Court, Alaska Rules of Professional Conduct, <https://courts.alaska.gov/rules/docs/prof.pdf> page
32 69, accessed October 3, 2023.

33 ² Attachment B,

34 ³ Attachment C, Alaska Alliance for Cruise Travel, Inc.'s website (alaskaact.com), accessed August 31,
35 2023.

36 ⁴ Attachment D, Steering Committee list from alaskaact.com, accessed August 31, 2023.

1 5. The Hearing Officer's response to Appellant's Request for Voluntary Withdrawal
2 of Hearing Officer⁵ acknowledges Appellant submitted an affidavit on line 5, page 2, and then
3 characterizes the supporting documents Appellant provided with no further acknowledgement or
4 reference to the affidavit, including the link from Huna Totem (Intervenor in this appeal) as
5 steering committee members of Alaska Alliance for Cruise Travel, Inc. to the Hearing Officer's
6 law firm or the case presented that the name Keene and Currall is inherently linked with cruise
7 industry boosterism and representation. To Appellant, the way this information was filtered by
8 the Hearing Officer, and the link to Huna Totem was ignored, is a red-flag of bias.

10 6. The Hearing Officer states that "the Keene and Currall firm does not represent
11 any party to the case, and has not previously represented the parties in other matters. ... With no
12 present or former clients of either attorney or firm involved in this matter, serving as a hearing
13 officer in this matter does not implicate Alaska Rules of professional Conduct 1.9, duties to
14 former clients, or 1.10, Imputation of Conflicts of Interest. There are no conflict of interest rules
15 which would preclude service as the hearing officer in this matter."

18 7. "The hearing officer is not aware of any reason why he cannot be a fair and
19 impartial hearing officer in this matter. ... the hearing officer has relevant experience with the
20 subject matter, but is not pre-disposed either for or against any party or the subject matter."⁶

22 8. The hearing officer does not define what he sees to be the "subject matter."⁷
23 Appellant sees the subject matter to include the cruise industry, because approval of a dock for
24 cruise ships is inherently linked with the cruise industry, and the cruise industry is a web of

26 ⁵ Attachment A, page 2, lines 5 to 20.

27 ⁶ Attachment A, page 2, line 21 to page 3, line 2.

28 ⁷ Black's Law Dictionary, "The thing in controversy, or the matter spoken or written about."

1 business and geographical connections within Alaska. A new cruise dock constructed, or not, in
2 Juneau has regional and business impacts in Ketchikan. Given the significant cruise industry
3 presence (encompassing not just cruise ships and passengers, but also the businesses reliant
4 upon) has on Ketchikan, and that the hearing officer is effectively a partner in a firm⁸ that is the
5 registered agent for a non-profit whose stated purpose is to “support responsible development
6 and growth of Alaska tourism and the cruise industry,”⁹ and whose president is Robert (Bob)
7 Berto.
8

9 9. Understanding connections relating to the cruise industry in Alaska requires
10 digging into corporate records, present and past, but is relevant in Appellant expressing concerns
11 about hearing officer bias with respect to this appeal that is about a dock in Juneau; however, has
12 implications and connections far beyond the dock. Nesting legal entities fog the picture. Robert
13 Berto, of Ketchikan, is a prominent figure and has direct ties to Huna Totem. One example is
14 “Cruise Line Agencies of Alaska [CLAA] has offices in: Ketchikan, Anchorage, Dutch Harbor,
15 Haines, Homer, Icy Strait, Juneau, Petersburg, Seattle, Seward, Sitka, Skagway, Valdez, Whittier,
16 and Wrangell.”¹⁰ Berto is presently registered agent for CLAA and has provided stevedoring
17 services to the cruise industry in Southeast Alaska at least since 1988 when Appellant first met
18 him representing Southeast Stevedoring and the cruise industry in the office of then
19 Representative Bill Hudson.
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23 10. From Appellant perspective, given a 35+ year history of following the cruise
24 industry in Southeast Alaska, even if the Hearing Officer believes that he is not pre-disposed on
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26 ⁸ Effectively is stated because, technically, an LLC, solely owned by the hearing officer, is the partner.

27 ⁹ <https://www.alaskaact.com/>, accessed October 3, 2023

28 ¹⁰ https://claalaska.com/?page_id=1853, accessed October 3, 2023

1 the "subject matter" under appeal, his association with a firm that has the Alaska Alliance for
2 Cruise Travel as an active client, even if just in the status of registered agent, inherent underlying
3 bias seems plausible and reasonably questioned.¹¹

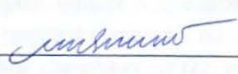
4 11. The appeal proceedings are being conducted via Zoom and email, so there are no
5 geographical constraints on where in Alaska a hearing officer is located. There are many
6 attorneys in Alaska. Appellant does not know why the Juneau City Attorney selected for this
7 cruise-related appeal a hearing officer who is in Ketchikan, where cruise industry-related biases
8 are more likely to exist, including the connections of his legal firm outlined above, than
9 elsewhere in Alaska. The questions on appeal relate to what Appellant asserts was an incomplete,
10 sloppy, and biased project review, and inadequate public outreach before the Planning
11 Commission hearing for a project of this community impact and controversy. These items do not
12 require cruise industry knowledge to assess and inherent, even unconscious, bias of a hearing
13 officer relating to the cruise industry could result in an unfair decision.
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17 _____

18 Karla Hart, Signature

19
20 Subscribed and sworn to or affirmed before me at Juneau, Alaska on OCTOBER 5, 2023.

21 Date

22
23 _____ 

24 Notary Public
25 MARIA LUCIANO
26 State of Alaska
27 My Commission Expires 12/09/2026

28 Notary Public or other person authorized to administer oaths.

My commission expires on: 12/09/2026

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38 ¹¹ "Generally, disqualification is appropriate if the hearing officer's impartiality can reasonably be questioned, such as when the hearing officer has a personal bias or prejudice concerning a party..." Alaska Department of Law, Hearing Officers Manual, 2002, page 11. https://law.alaska.gov/pdf/manuals/hearing_officer.pdf, accessed October 5, 2023.

Attachment A

1 **BEFORE HEARING OFFICER FOR THE ASSEMBLY OF THE**
2 **CITY AND BOROUGH OF JUNEAU**

3 KARLA HART,

4 Appellant,

5 vs.

6 CITY AND BOROUGH OF JUNEAU
7 PLANNING COMMISSION

8 Appellee.

 Notice of Decision: July 20, 2023
 Appeal Case No. APL 2023-AA01

9
10 **ORDER DENYING REQUEST FOR VOLUNTARY WITHDRAWAL OF HEARING OFFICER**

11 A scheduling conference on the above captioned matter was held on September 22, 2023,
12 via Zoom. On September 22, 2023, appellant Karla Hart filed with the Clerk a Motion for Hearing
13 Officer to Recuse. As discussed at the scheduling conference, this Motion was a request that the
14 hearing officer voluntarily withdraw from the case under CBJ Code 1.50.100(b). This section
15 provides:

16
17 (b) A hearing officer or appeal agency member shall voluntarily withdraw from a
18 case in which the hearing officer or appeal agency member cannot accord a fair and
19 impartial hearing. A party may request the disqualification of a hearing officer or
20 appeal agency member by filing an affidavit, before the taking of evidence at the
21 hearing, stating with particularity the grounds upon which it is claimed that a fair
22 and impartial hearing cannot be accorded. If the request concerns an appeal agency
23 member, the issue shall be determined by the other members of the appeal agency.
24 If the request concerns the hearing officer, the issue shall be determined by the
25 appeal agency.

26 The appellant indicated that the request for voluntary withdrawal to be decided by the hearing
 officer, under the first sentence of CBJ 1.50.100(b), not a request for disqualification to be

1 determined by the appeal agency (the Assembly sitting as the Board of Adjustment). Appellant
2 submitted the Motion and accompanying materials indicating that the firm of Keene & Currall,
3 PPC,¹ has represented tourism industry clients. The appellant requests an independent hearing
4 officer with no association with the cruise industry or Huna Totem Corporation in any capacity.
5 The appellant submitted an affidavit and supporting documents relating to Keene & Currall, a
6 professional corporation, Keene & Currall, PPC, and deceased former partners of Keene & Currall.

7 The documents submitted included firm web page advertisements, a letter to the City and
8 Borough of Skagway from H. Clay Keene on behalf of the White Pass and Yukon Route, corporate
9 records from the State of Alaska web site for various entities, a copy of a list of steering committee
10 members of the Alaska Alliance for Cruise Travel, Inc. board members of and a copy of the articles
11 of incorporation of the Alaska Alliance for Cruise Travel, Inc. prepared by Geoff Currall, then a
12 partner with Keene and Currall, but who since left the firm and died approximately 8 years ago.

13 As indicated at the status hearing, the Keene and Currall firm does not represent any party to
14 the case, and has not previously represented the parties in other matters. H. Clay Keene regularly
15 represents businesses active in the tourism industry. Scott Brandt-Erichsen's clients are primarily
16 municipalities and private parties, some of whom may conduct sales to tourists. With no present
17 or former clients of either attorney or the firm involved in this matter, service as a hearing officer
18 in this matter does not implicate Alaska Rules of professional Conduct 1.9, duties to former clients,
19 or 1.10, Imputation of Conflicts of interest. There are no applicable conflict of interest rules
20 which would preclude service as the hearing officer in this matter.

21 Additionally, the hearing officer is not aware of any reason why he cannot be a fair and
22 impartial hearing officer in this matter. With 35 years' experience advising municipalities and
23 having served as a hearing officer for multiple municipalities in zoning and planning matters, the

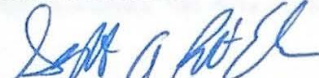
24 ¹ Keene & Currall, PPC, is a partnership of professional corporations, Brandt-Erichsen LLC, solely owned by Scott
25 Brandt-Erichsen, and Keene & Currall a professional Corporation, solely owned by H. Clay Keene.

1 hearing officer has relevant experience with the subject matter, but is not pre-disposed either for
2 or against any party or the subject matter. Accordingly, the appellant's request for voluntary
3 recusal is denied.

4 If the appellant, appellee, or intervenor desires to file an affidavit and request for the
5 disqualification of the hearing officer by the appeal agency such a request should be filed by
6 October 6, 2023. If a request is filed for consideration by the agency, the intervenors and appellee
7 shall have the opportunity to file a response by October 16, 2023, and any reply by October 23,
8 2023, so that the agency may consider any such request prior to briefing in the case.

9
10 DATED this 25th day of September, 2023.

11
12 HEARING OFFICER

13 
14 By: Scott A. Brandt-Erichsen



THE STATE of ALASKA

Department of Commerce, Community, and Economic Development
Division of Corporations, Business, and Professional Licensing
PO Box 110806, Juneau, AK 99811-0806
(907) 465-2550 • Email: corporations@alaska.gov
Website: corporations.alaska.gov

Entity # 126529
Date Filed: 06/30/2023
State of Alaska, DCCED

FOR DIVISION USE ONLY

Domestic Nonprofit Corporation

2023 Biennial Report
For the period ending June 30, 2023

Attachment B

WEB-6/30/2023 2:12:06 PM

Due Date: This report along with its fees are due by July 2, 2023

Fees: If postmarked before August 2, 2023, the fee is \$25.00.
If postmarked on or after August 2, 2023 then this report is delinquent and the fee is \$30.00.

Entity Name: Alaska Alliance for Cruise Travel, Inc.
Entity Number: 126529
Home Country: UNITED STATES
Home State/Prov.: ALASKA
Physical Address: 415 Tower Road, Ketchikan, AK 99901
Mailing Address: 121 W FIREWEED LN STE 250, ANCHORAGE, AK 99503

Registered Agent information cannot be changed on this form. Per Alaska Statutes, to update or change the Registered Agent information this entity must submit the Statement of Change form for this entity type along with its filing fee.

Name: KEENE & CURRALL, A PROFESSIONAL CORPORATION
Physical Address: 540 Water St #302, Ketchikan, AK 99901
Mailing Address: 540 Water St #302, Ketchikan, AK 99901

Officials: The following is a complete list of officials who will be on record as a result of this filing.

- Provide all officials and required information. Use only the titles provided.
Four (4) Mandatory Officers, who must be individuals: this entity must have a President, Vice-President, Secretary, and Treasurer. Two or more offices may be held by the same individual, except the offices of President and Secretary cannot be the same individual.
Three (3) Mandatory Directors, who must be individuals. The number of directors must be at least three (3).

Table with 9 columns: Full Legal Name, Complete Mailing Address, Assistant Secretary, Assistant Treasurer, Director, President, Secretary, Treasurer, Vice President. Rows include Bob Dindinger, Bob Berto, Ken Dole, and Carol Fraser.

If necessary, attach a list of additional officers on a separate 8.5 X 11 sheet of paper.

Purpose: encourage cruise and tourism industries in Alaska

NAICS Code: 813910 - BUSINESS ASSOCIATIONS

New NAICS Code (optional): []

Attachment C

Who We Are

Alaska Alliance for Cruise Travel (AlaskaACT) is a statewide, non-profit, membership-funded organization made up of businesses and individuals benefiting from cruise travel. Through AlaskaACT, these stakeholders will work together to promote accurate information and support responsible development and growth of Alaska tourism and the cruise industry.

LEARN MORE



Attachment 1



Steering Committee

To contact a member of our steering committee, click their name below:

Bob Berto, TEMSCO Helicopters/North Star Terminal, Ketchikan

Scott Habberstad, Alaska Airlines, Anchorage

Ethan Berto, Cruise Line Agencies of Alaska, Ketchikan

Karen Hess, Chilkat River Adventures, Haines

Ryan Binkley, Riverboat Discovery, Fairbanks

Tyler Hickman, Icy Strait Point, Hoonah

Steve Hites, Skagway Street Car, Skagway

Tanja Cadigan, Caribou Crossings, Juneau

Holly Johnson, Wings Airways/Taku Glacier Lodge, Juneau

Tim Cerny, Fountainhead Development Corporation, Fairbanks

Laura Martinson, Caribou Crossings, Juneau

Russell Dick, Huna Totem Corporation, Juneau

Dennis McDonnell, Alaska Coach Tours, Anchorage

Bob Dindinger, Alaska Travel Adventures, Juneau

Vickey Moy, White Pass/Yukon Route

Ken Dole, Promech Air/Waterfall Resort, Ketchikan

Fred Reeder, Cruise Lines Agencies of Alaska, Sitka

Carol Fraser, Aspen Hotels of Alaska
(AlaskaACT President)